

CV 17-6072389

STATE OF CONNECTICUT
APPELLATE COURT

ELIYAHU MIRLIS

A.C. NO. 44016

Appellee

v.

YESHIVA OF NEW HAVEN INC.

Appellant

AUGUST 3, 2020

APPELLANT'S OBJECTION TO MOTION TO TERMINATE STAY

Pursuant to Practice Book § 61-11(d and e) the appellant, Yeshiva of New Haven, Inc. ("Yeshiva"), respectfully objects to the Motion to Terminate Stay (the "Motion") filed by plaintiff, Eliyahu Mirlis.

I. BRIEF HISTORY OF THE CASE

On June 6, 2017, final judgment entered against the Yeshiva and Daniel Greer ("Greer") and in favor of plaintiff, Eliyahu Mirlis (the "Plaintiff" or "Mirlis") in the U.S. District Court case styled *Eliyahu Mirlis v. Daniel Greer, et al.*, Case No. 3:16-CV-00678 (the "District Court Case") in the amount of \$21,749,041.10 (the "Judgment"). Subsequently, on June 28, 2017, Greer and the Yeshiva filed a motion for new trial in the District Court Case pursuant to Fed. R. Civ. P. 59(a) (the "New Trial Motion") seeking either an order granting a new trial or remittitur of the Judgment on the basis that the evidence could not fairly support the jury's award of non-economic damages.

ORAL ARGUMENT REQUESTED

On July 7, 2017, Plaintiff filed a certificate of judgment lien (the "Judgment Lien") against the property known as 765 Elm Street, New Haven, Connecticut (the "Property") with the Office of the City Clerk for the City of New Haven, Connecticut. Thereafter, on July 27, 2017, Plaintiff initiated the instant action by filing a complaint seeking foreclosure of the Judgment Lien. On October 27, 2017, Greer and the Yeshiva filed a motion for relief from final judgment (the "Motion for Relief") in the District Court Case on grounds that newly-discovered evidence had been brought to the attention of Greer and the Yeshiva thereby warranting relief under Fed. R. Civ. P. 60(b)(2). On November 8, 2017, Plaintiff filed his Motion for Summary Judgment in the instant case.

The District Court heard oral argument on the New Trial Motion and Motion for Relief on December 8, 2017 and denied both motions. As such, on December 15, 2017, Greer and the Yeshiva filed a Notice of Appeal indicating that Greer and the Yeshiva seek review by the United States Court of Appeals for the Second Circuit from the Judgment and the District Court's denial of the New Trial Motion and Motion for Relief. The decisions of the District Court were subsequently affirmed.

II. SPECIFIC FACTS RELIED UPON

Plaintiff initiated this action to foreclose its Judgment Lien. The parties agree that the value of the Property is far less than the Judgment and, thus, the issue tried to the Court concerned determination of the fair market value of the Property for purposes of the Yeshiva's (1) *Objection to Motion for Judgment of Strict Foreclosure*, (2) *Motion to Discharge Judgment Lien and Substitute Bond*, and (3) *Motion to Continue Hearing on Motion for Judgment of Strict Foreclosure*, Doc. No. 115 (the "Motion to Substitute"),

and Plaintiff's *Motion for Judgment of Strict Foreclosure*, Doc. No. 113 (the "Foreclosure Motion").

On October 28, 2019 and December 9, 2019, the Court (Baio, J.) heard testimony from Patrick S. Craffey, appraiser for Plaintiff, and Patrick J. Wellspeak, MAI, appraiser for Defendant.¹ By stipulation, the written reports of both appraisers were admitted into evidence.²

The Property at issue is a more than 100-year-old building located on the corner of Maple Street and Norton Street in New Haven. For many years, the Property has housed various versions of a "yeshiva," or a school of Jewish learning. Merriam-Webster Dictionary, *available at*: <https://www.merriam-webster.com/dictionary/yeshiva> (visited Jan. 27, 2020). Both appraisers agree that the Property is in relatively poor condition, with substantial physical plant deficits, including sub-standard HVAC, restroom, and other facilities. 10/28/19 Tr. at 15; 12/9/19 Tr. at 14, 45.

Both appraisers also agreed that due to consolidation and closure of Catholic parishes and schools, there was a substantial inventory of vacant school buildings on the market. 10/28/19 Tr. at 20, 50-51; 12/9/19 Tr. at 19-20. Indeed, there were three recent transactions in New Haven alone, of former Catholic schools being sold. Craffey Report at 42-43, Plf. Ex. 1; Wellspeak Report at 45-47, Def. Ex. A. Despite these sales, Mr. Craffey failed to use any of them as a comparable property to value the subject

¹ The hearing transcripts are referenced herein as "10/28/19 Tr. at ____" and "12/9/19 Tr. at ____". The pages referenced herein from the hearing transcripts are attached hereto as Exhibit A.

² The appraisals of Messrs. Craffey and Wellspeak are set forth in full in the Appellant's Appendix Part II at A232 and A317, submitted with the Yeshiva's Opening Appellate Brief in this matter. Because the appraisals are voluminous, they are not reproduced and attached to this motion.

Property.³ Indeed, he didn't consider any properties located in New Haven in his assessment. Further, both appraisers employed a sales comparison approach to ascertain the "market value" of the Property. Craffey Report at 41-42, Plf. Ex. 1; Wellspeak Report at 45-47, Def. Ex. A. Nevertheless, two of the properties Mr. Craffey deemed "comparable," were never publicly marketed for sale. 10/28/19 Tr. at 28, 59-60. All of the comparable properties considered by Mr. Wellspeak were publicly marketed and three of the five he reviewed were located in New Haven. Wellspeak Report at 37, Def. Ex. A.

In addition to his inspection of the Property and application of the comparable sales valuation method, Mr. Wellspeak also considered environmental contamination on the Property. As part of the appraisal process, Defendant retained a licensed environmental professional ("LEP"), WSP, USA, which prepared a Phase I Environmental Assessment, as well as performed testing concerning asbestos and lead paint (the "Environmental Testing"). Wellspeak Report at 2, Def. Ex. A; 12/9/19 Tr. at 23-29. Despite being on notice of environmental issues, Mr. Craffey ignored them. Craffey Report at 2, Plf. Ex. 1.

Therefore, in reaching his opinion of value, Mr. Craffey failed to consider how a willing buyer would seek to approach purchasing the Property, including analyzing the state of the Property and any environmental hazards, as well as actual recent sales of comparable properties in New Haven, and did not take into account actual economic conditions. As a result, Mr. Craffey's proposed valuation skews high. Craffey Report at

³ Both appraisers agreed that one of the properties, the former St. Peter's school, was not an appropriate comparable because of the nature of the sale.

42, Plf. Ex. 1. By contrast, Mr. Wellspeak sought to identify the objective market value of the Property, concluding the value was \$390,000.00, properly applying valuation methodology. Wellspeak Report at 47, Def. Ex. A.

A. Procedural History

In the Ruling, the Trial Court recited the legal standards but did not explain why it determined the value to be \$620,000, the mid-way point between the valuation proposed by each party. Therefore, it is unclear why the Trial Court reached its ultimate decision.

On June 26, 2020 Yeshiva filed a *Motion for Articulation* as to the Ruling. The Trial Court (Baio, J.) denied the *Motion for Articulation* on July 24, 2020 (the "Articulation Denial Order"). Super. Ct. Doc. No. 140.00. On August 3, 2020, the Yeshiva moved for review of the Articulation Denial Order.

On July 6, 2020 the Yeshiva filed its opening appellate brief. On August 3, 2020, Plaintiff filed its answering brief. The Yeshiva's reply brief is due August 23, 2020. Practice Book § 67-3.

On July 26, 2020, Plaintiff filed the instant Motion.

III. LEGAL GROUNDS RELIED UPON

A. The Appellate Stay Generally

Pursuant to Practice Book § 61-11(d) the automatic stay on appeal applies unless terminated because "the judge who tried the case is of the opinion that... the due administration of justice so requires." The trial court "shall hold a hearing prior to terminating the stay." *Id.* When assessing a motion to terminate the appellate stay: "[t]he factors to be considered include the irreparability of the prospective harm to the

applicant, the effect of the delay on other parties as well as upon the public interest, and the likelihood that the appeal will be successful.” *BNY W. Tr. v. Roman*, 2015 WL 3555257, at *2 (Conn. Super. May 11, 2015); *Griffin Hospital v. Commission on Hospitals and Health Care*, 196 Conn. 451 (1985). The burden is on the appellee to demonstrate cause to terminate the stay. *Taom Heritage New Haven LLC v. Fuun House Productions LLC*, 2019 WL 2591108, at *3 (Conn. Super. Mar. 25, 2019) (“[a]lthough this court firmly believes that its factual findings are correct and its judgments just, it is also humble enough to allow the defendants their ability to appeal the court's decisions, without effectively mooting that appeal.”).

B. The Yeshiva Has Submitted a Bona Fide Appeal

The Yeshiva has appealed the decision of the Trial Court because the Ruling only sets forth the Trial Court's ultimate conclusion of value without explanation. Stated differently, there is no reasoned decision for the Trial Court's averaging of the two appraisals. While the trial Court, no doubt, “carefully and fully considered and weighed all the evidence received at the hearing,” there is no explanation of how this was done and why it resulted in a “split the baby” valuation.

“If an opinion is addressed to the parties, it should provide them with a fair and accurate statement of what was before the court for decision, what the court decided, and ***what the reasons for the decision were.***” Judicial Writing Manual: A Pocket Guide for Judges at 5 (2nd Ed. 2013)⁴ (emphasis added), Federal Judicial Center. It is reversible error, even under an abuse of discretion standard, when a trial court fails “to

⁴ Available at: https://www.fjc.gov/sites/default/files/materials/16/Judicial%20Writing%20Manual_Second%20Edition_Fourth%20Printing_2020.pdf (visited Aug. 3, 2020).

address a necessary condition of law." *Giametti v. Inspections, Inc.*, 76 Conn. App. 352, 366 n. 9 (2003). That is precisely what occurred in this case: the Trial Court did not explain why the evidence adduced at trial supported the valuation found.

While a trial court has significant discretion to evaluate evidence, the court must explain why the evidence adduced supports its conclusions. *State v. Edwards*, 148 Conn. App. 760, 765, 769 (2014) (decision reversed as clearly erroneous when "[t]he court made no other findings supporting the conclusion that the defendant changed his residence address, such as ruling that the defendant was living in the warehouse."). Most important, judges should provide an explanation for their rulings:

The judge must deal with arguably contrary authorities and opposing arguments, and must confront the issues squarely and deal with them forthrightly. Although the opinion need not address every case and contention, the discussion of legal principles must be sufficient to demonstrate to the losing party that the court has fully considered the essentials of its position.

Judicial Writing Manual at 16. In other words, the parties are entitled to an understanding of why and how the Trial Court reached its decision, not just that the Trial Court considered the evidence and a statement of the ultimate ruling.

C. Application of the *Griffin Hospital* Factors

Applying the test established by *Griffin Hospital* favors denial of the Motion and continuation of the appellate stay.

1. Basis for Appeal and Likelihood of Success

First, the appeal was not filed "only" for delay. The Yeshiva believes it has the ability to succeed on this appeal. Specifically, averaging appraisals is not generally an acceptable method of finding valuation:

Ultimately, the fact-finder, here the judge, must weigh and evaluate the experts' opinions, including their credibility, to fulfill the judge's responsibility in reaching a reasoned, just and factually supported conclusion. In our view, averaging cedes this unique responsibility to a simple mathematical formula and is an unacceptable methodology for fulfilling one's role as a fact-finder.

While there is limited authority for the proposition that averaging is an inappropriate appraisal technique, the majority of reasoned decisions addressing the subject support this view.

Pansini Custom Design Associates, LLC v. City of Ocean City, 969 A.2d 1163, 1167 (N.J. Super. Ct. App. Div. 2009) (reviewing and collecting cases).

In *Pansini*, the New Jersey Appellate Court reversed a valuation decision by a trial court that averaged the competing appraisals without explanation holding: "[w]e are of the view that averaging, whether of appraisals or comparable sales, is not an appropriate methodology for assessing divergent values." *Id.* at 1169. Similarly, applying Federal Rule of Civil Procedure 52(a)(1), a bankruptcy court's valuation based on averaging appraisals was reversed "[b]ecause sufficient findings are lacking to follow the steps by which the bankruptcy court reached this conclusion...." *First Brandon Nat. Bank v. Kerwin-White*, 109 B.R. 626, 632 (D. Vt. 1990).

In contrast, Plaintiff argues that courts need not explain their valuation decisions, but cites no support for this proposition. Motion at 11-12. For example, in *Webster Tr. v. Mardie Lane Homes, LLC*, 93 Conn. App. 401, 407-8 (2006), a case heavily relied on by Plaintiff, the defendant, there, *never presented valuation evidence*: "[b]ecause there was no evidence of any other value, *the defendant's claim as to value in excess of \$139,000 is based on nothing more than speculation*. In the absence of any such evidence, we cannot say that the court abused its discretion when it did not revalue the

subject property on February 14, 2005.” (Emphasis added). Here, the Yeshiva clearly presented evidence. Thus, *Webster* does not support the proposition for which it is cited.

This appeal was filed to vindicate the Yeshiva’s rights as set forth above and further articulated in its Opening Appellate Brief. Given the Trial Court’s unexplained averaging of appraisals, the Yeshiva has set forth a valid basis for appeal.

2. Plaintiff Cannot Identify Any Irreparable Harm

If the stay is lifted, the effect would be to moot the Yeshiva’s appeal. Therefore, there would be irreparable harm to the Yeshiva because it would not have the ability to raise the \$390,000 to bond off Plaintiff’s judgment lien. The Yeshiva is a non-profit entity. It must raise the amount necessary to post the bond. Obviously, it is easier to raise \$390,000 than \$620,000. The appeal will be fully briefed by the end of August. The Property is not going anywhere. There is no mortgage on the Property and the only harm Plaintiff can point to is the fact that he believes he should be able to receive money faster. Motion at 11.

While Plaintiff’s brief is long on rhetoric, it is short on any evidence of delay. Motion at 10. As to the alleged “improper delay tactics,” Plaintiff cannot actually identify any. First, only one appeal has been filed in this case.⁵ Second, the Yeshiva is not a party in other cases referenced by Plaintiff involving Mr. Greer’s wife and other entities. Third, with respect to the discovery dispute referenced (see Motion at 4-5), Plaintiff failed to state that he entered into a stipulation agreeing to take Mr. Greer’s deposition

⁵ Appeals were filed in the Underlying Case, which the Second Circuit Court of Appeals took nearly a year to decide.

telephonically, as requested, and that deposition occurred on July 27th. Moreover, Plaintiff delayed prosecuting *this case* for nearly a year. Summary judgment as to liability was granted in January 2018, but no motion for judgment was filed until June 2019.

Also absent from Plaintiff's Motion is an explanation of how he will be harmed. Lack of equity in property and failure to make payments alone do not merit lifting the appellate stay. *Ocwen Loan Servicing, LLC v. Mordecai*, 2019 WL 5543870, at *2 (Conn. Super. Oct. 2, 2019). Therefore, Plaintiff will not be irreparably harmed by allowing the appeal to play itself out, whereas the Yeshiva (by losing its property or being required to post a \$620,000 bond) would.

3. Resolution of this Case Will Have No Effect on Non-Parties or the Public Generally

This case involves collection efforts on the Judgment and does not implicate any public interest. Unless the "sole" purpose of an appeal is delay, the appellate stay should remain in place. *Id.* (denying motion to terminate appellate stay even though: "[t]he public interest would also be served in terminating the stay and returning this property to the market for ownership by a potentially viable new owner able to pay for taxes and municipal services and stay current on their mortgage, thus potentially helping the property value of this parcel and the property values in the neighborhood.")

Even when the public does have an interest in terminating an appellate stay, that interest is only rarely overcome by the public's "interest in preserving a party's right to appeal." *Taom* 2019 WL 2591108, at *2. "This right to appeal is fundamental to our system of justice and arises out of the humble and certain recognition that even with the best of intentions and human skill, mistakes can be made. When weighing these two

interests, only in the most unusual and certain cases does the first interest outweigh the second." *Id.*

Plaintiff has not established the requisite showing to obtain relief from the appellate stay. Hence, the Motion should be denied.

IV. CONCLUSION

For the reasons set forth above, this Court should deny the Motion.

THE APPELLANT:
Yeshiva of New Haven, Inc.

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CERTIFICATIONS OF COUNSEL IN ACCORDANCE
WITH PRACTICE BOOK § 62-7(b)(3)

The undersigned hereby certifies that pursuant to Practice Book § 62-7(b): (1) a copy of the foregoing has been delivered to each counsel of record as set forth below (which certification shall include names, addresses, e-mail addresses, and telephone numbers); (2) the foregoing document, to the extent required, has been redacted and/or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and (3) the document complies with all applicable Rules of Appellate Procedure.

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Date of Service: August 3, 2020

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Exhibit A

NO: NNH CV 17 6072389 S : SUPERIOR COURT
ELIYAHU MIRLIS : JUDICIAL DISTRICT
OF NEW HAVEN
v. : AT NEW HAVEN, CONNECTICUT
YESHIVA OF NEW HAVEN, INC. : OCTOBER 28, 2019
FKA THE GAN, INC. FKA T.

BEFORE THE HONORABLE CLAUDIA BAIO, JUDGE

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1 him, so.

2 THE COURT: Counsel.

3 ATTY. CESARONI: We - we can - I'll direct
4 him to the report if he doesn't recall, your
5 Honor.

6 THE COURT: Okay. Fair enough.

7 Objection then is to that extent - well, are
8 you withdrawing the question and -

9 ATTY. CESARONI: I'll - I'll withdraw the
10 question.

11 THE COURT: Okay. So there needn't be - no
12 ruling on that.

13 BY ATTY. CESARONI:

14 Q Do you remember when the - the - the improvements on
15 the property were built?

16 A It was Circa 1900 is my recollection.

17 Q Okay. And did you have any concerns about the
18 integrity of the - of the structure of the building on the -
19 on the property?

20 A I did not.

21 Q Did you inspect the HVAC systems at the property?

22 A I inspected the boiler room and the heating elements,
23 but I did not inspect any further than that.

24 Q Okay. What was your impression of the HVAC system
25 based on your inspection?

26 A It appeared to be antiquated. It's an oil fired
27 system. And some of the classrooms on the ground floor had

1 enrollment at the - the current Yeshiva school, what affect
2 does that have on the desirability of the location as far as
3 your conclusion?

4 A I was concerned when I initially inspected,
5 especially with the growth of the other Rabbinical School in
6 the neighborhood, that perhaps in the decline of this - this
7 - the Yeshiva Of New Haven, that the school population
8 demand had been tapped out by the increased supply of the -
9 of the nearby facility. In speaking with the representative
10 of that - that school, I found that that wasn't the case.

11 ATTY. SKLARZ: Objection. I believe - first
12 - first of all, it - it's hearsay. I understand
13 he's an expert and can rely on hearsay, but he's
14 not an expert in the number of students that can
15 attend the school and how that im - how that
16 impacts whether people go - whether there should
17 be more or less schools. He's here to evaluate
18 real estate, not - not the feasibility of the
19 school. So I would object to him - to him
20 testifying as to this.

21 THE COURT: Counsel?

22 ATTY. CESARONI: Well, part - part of the -
23 part of his testimony is that - will eventually be
24 elicited, that the use of - that the highest and
25 best use is as a school. And so in order to
26 establish there's demand for the school and - and
27 based on its location, I think it's important that

1 So the - as part of the - the sale process, he agreed
2 to come on for a year and stabilize operations of the
3 school, make some upgrades. And then he purchased the - the
4 property and the - and the school at the same time.

5 Q Okay. And had you previously performed appraisal
6 work with regard to the Paier College of Art?

7 A Several months before it sold, I - I appraised the
8 property.

9 Q Who did you - who did you appraise it for?

10 A I appraised it for the lending institution involved
11 in the - that provided financing for the sale.

12 Q And as - as part of that, did you perform an
13 inspection of that property?

14 A I did.

15 Q Okay. And it was - it was purchased to be used as a
16 - was it - was it purchased to be used as a - as a school
17 going forward?

18 A It was. It was purchased for a continued use as the
19 - as the same school.

20 Q And then could you describe generally the - the Learn
21 Academy property, which is the - the next comparable sale?

22 A Yes. That's located in New London, Connecticut in a
23 mixed-use area near Mitchell College. It is a former school
24 and synagogue purchased for school use. They're - the buyer
25 was going to perform significant renovations after the -
26 after the sale. The property was openly marketed through
27 Susan Howard of US Properties. And it's also similar in

1 A I think what I said is that the Hartford Diocese
2 combined several parishes and that resulted in several
3 church properties being available, and to a lesser extent it
4 impacted school properties.

5 Q Now, I believe when - when you were discussing your
6 background with Miss - with Mr. Cesaroni, you indicated that
7 in the last five years you've appraised fourteen different
8 school properties; is that correct?

9 A I've had fourteen assignments including this
10 involving school properties.

11 Q Do you recall your deposition?

12 A I do.

13 Q And you recall that I asked you a number of questions
14 at - at that deposition?

15 A I do.

16 Q And do you recall being under oath?

17 A I do.

18 Q And do you - and - and at your deposition, I asked -
19 I asked the following question and this was the following
20 answer: In the past five years, what schools have you
21 appraised? Answer: Five year - five - five years, I can't
22 be sure. Several. Can you name a few? I can't off the top of
23 my head. The past five years I can't be sure when I
24 appraised the schools. But today you remember fourteen
25 schools?

26 A I refreshed. I looked at the schools I appraised
27 after the deposition, yes.

1 Q So at the deposition you testified on incomplete
2 knowledge; is that correct?

3 A That's fair to say, yes.

4 Q Okay. Now, if we turn to page twenty-eight of your
5 report, there's four school properties that you used as
6 comparables in this case. Correct?

7 A That's correct.

8 Q And only one of those properties is located in New
9 Haven County, correct?

10 A That's correct.

11 Q And none of the schools are located in New Haven
12 itself, correct?

13 A Correct.

14 Q Now, the Paier property was a property you were
15 personally familiar with, correct?

16 A I had appraised it prior to the sale, yes.

17 Q You were hired by the bank who extended the financing
18 to do the bank's appraisal, correct?

19 A That's correct.

20 Q And that - that fact was not disclosed in the report,
21 was it?

22 A No.

23 Q And the - the Paier property was never even put on
24 the market, was it - was it?

25 A That's correct.

26 Q It was, as you testified to recent - just - just a
27 few minutes ago, a buyer looking for - I'm sorry. A seller

1 comparable?

2 A It's at the discretion of the - the appraiser and in
3 line with what our peers would do.

4 Q So it's just your subjective professional judgment?

5 A Yes.

6 Q So you chose two properties that were sold in 2014 in
7 the Hartford area as comparables here; that's correct?

8 A I did indeed. Yes.

9 Q Yet the St. Brendan's property around the corner sold
10 I believe a year or two ago, that you left off, correct?

11 A That's correct.

12 Q Now -

13 A Well, 2017. So, yes.

14 Q - the - now you didn't - you also didn't disclose
15 your relationship with the buy - with CREC in this report,
16 did you?

17 A I did not.

18 Q And this property was never exposed to the open
19 market either?

20 A That's correct.

21 Q It was never listed for sale -

22 A That's correct.

23 Q - correct?

24 It was never - there's no brokered transaction of
25 this property, correct?

26 A That's correct.

27 Q In fact, what happened was CREC, a longtime tenant,

1 ended up buying it, right?

2 A They were a tenant and they did purchase it, yes.

3 Q Sort of like that long-term tenant who bought the
4 Columbus Avenue property, bought - bought that property,
5 right? Two tenants buying properties.

6 A Sort of like I guess in - in that limited - by that -
7 in that limited statement, yeah, that's - there's - there's
8 some similarity there.

9 Q CREC - CREC the tenant bought Bloomfield. Whoever
10 the - whoever the tenant was of Columbus Avenue, bought
11 Columbus Avenue, right?

12 A I mean, the significant difference is that -

13 Q I understand you -

14 A - CREC - CREC wasn't subject to the lease whereas the
15 other tenant was.

16 Q - sir. Sir. I -

17 ATTY. SKLARZ: Your Honor, I'm just trying to
18 ask him yes or no questions and he's making
19 statements.

20 THE COURT: Sir, if you could just answer the
21 questions.

22 THE WITNESS: Okay.

23 THE COURT: If there's any follow-up, your
24 attorney will have an opportunity to ask some
25 redirect.

26 THE WITNESS: Thank you, your Honor.

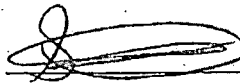
27 ATTY. SKLARZ: Thank you, your Honor.

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FKA THE GAN, INC. FKA T.

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New Haven, New Haven, Connecticut, before the Honorable Claudia Baio, Judge, on the 28th day of October, 2019.

Dated this 31st day of December, 2019 in New Haven, Connecticut.



Sheila Demetro
Court Recording Monitor

NO: NNH CV 17 6072389 s : SUPERIOR COURT
ELIYAHU MIRLIS : JUDICIAL DISTRICT
OF NEW HAVEN
v. : AT NEW HAVEN, CONNECTICUT
YESHIVA OF NEW HAVEN, INC. : DECEMBER 9, 2019
FKA THE GAN, INC. FKA T.

BEFORE THE HONORABLE CLAUDIA BAIO, JUDGE

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NEW HAVEN, CT 06511

Recorded By:
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Transcribed By:
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Court Recording Monitor
235 Church Street
New Haven, CT

1 Q If we turn to page twelve, what are these pictures
2 showing?

3 A So page twelve are pictures of the lower level. And
4 so the top picture is a commercial kitchen. The Yeshiva
5 School, while it was in operation, made meals there. And so
6 part of the issue with the building, as I indicated, the
7 lower level has this English basement with either smaller
8 windows or in some areas where the topography changes, no
9 windows at all, so the kitchen was put into the front of the
10 building where there aren't any windows. You know, it's
11 kind - it's where you'd have mechanical areas, you'd have
12 areas that just don't require natural light, so that's a
13 view of the kitchen.

14 One of the other things that can be observed from
15 looking at that is that the height is reduced compared to
16 floors one and two. And there's also piping and duct work
17 and things like that that further reduce the clear height as
18 opposed to the floor to ceiling height.

19 The second picture on that page at the bottom of page
20 twelve is the central corridor in the basement area. So
21 similar to the upper floors, floors one and two that have a
22 - a very large corridor, the basement area has that as well.

23 There's a gymnasium. There was an art room. And
24 then the commercial kitchen. The mechanical rooms were down
25 there like the old - the boiler room and an old room where
26 they used to -

27 Q Tell me about -

1 And so the first course of action when a broker goes
2 to sell a property like that is to say, you know, it can
3 keep being used as a school and you can buy it for that or
4 you could look at it for re-use alternatives. And I think a
5 property like the subject, it's very old and has a lot of
6 functional drawbacks for use as a school. You're either
7 going to get a private school to buy it or you're going to
8 get somebody that's going to want to reuse the asset and
9 more than likely convert it to multi-family.

10 Q Okay. And in trying to - and in - and in determining
11 that, what - what - what research did - did you do? Did -

12 A For - in determining the highest and best use?

13 Q Yes. Did you talk to anyone -

14 A Yeah, I mean -

15 Q - did you have any records?

16 A Yeah. Well, again, I rely on my other experience of
17 working with other school properties and seeing what
18 happens. And for something that's relatively modern and at
19 a smaller size, there's a lot of times a good chance that it
20 could be bought for continued use as a school. This property
21 is kind of on the boarder. It's a little larger, and as I
22 said, it has some functional drawbacks for continued use as
23 a school, some of which are tied to environmental, some of
24 which are not. The oversized hallways, the limited number
25 of classrooms, the fact that bathrooms are only on one
26 floor. Those are among the challenges.

27 So again, I think if you find the - the needle in the

1 haystack buyer, you may get someone that wants it for a
2 school or they want it for like a rehab center or some -
3 that - that kind of use. If you don't, then I think you put
4 it, you know, the market is probably going to tell you, we -
5 we have no need for it for that use and we're going to look
6 at it for a - a reuse.

7 Q Okay. And the - the building in general, how do you
8 - what do you consider it? How do you - how did you find
9 the physical plan?

10 A It's a 1900 building and it shows it.

11 Q Now, another topic you considered, and you had men -
12 I think you had mentioned this earlier, is you considered
13 environmental issues. And if we look at page twenty -
14 beginning on page twenty-four of your report, the - you -
15 you describe the site, including the neighborhood, and then
16 into the specific improvements of the school on page twenty-
17 seven. How did - well, why did you consider environmental
18 issues in - in preparing your appraisal?

19 A I - I was requested to consider the environmental
20 issues in the appraisal.

21 Q And - and does - does - are there standards of
22 appraising when considering environmental issues?

23 A There are not standards. There are advisory opinions
24 within USPAP about environmental.

25 Q And - and is there any special training that is
26 offered in terms of how to deal with environmentally
27 distressed property?

1 you handle that?

2 A So again, it came - I started by reading Mr. Jones'
3 report and then asked for the call with him because he had
4 come up with cost estimates for those four items that I
5 identified.

6 Q So let's just - let's just roll it back a little bit.

7 What was the asbestos - what's your understanding as
8 to what the asbestos issue was?

9 A Asbestos in the floor tiles.

10 Q So these are floor tile -

11 A The floor tiles are -

12 Q - these are floor tiles?

13 A - in the basement and the stairwells.

14 Q Okay. And why would there be asbestos in those floor
15 tiles -

16 A There -

17 Q - to the best of your knowledge?

18 A They're old. I mean, it was a product that was used
19 at one time.

20 Q Okay. And so how - what - how did you consider - how
21 did you treat the asbestos issue in your report? I'm sorry.
22 In your appraisal?

23 A Sure. So Mr. Jones had come up with a total estimate
24 for dealing with the flooring issue, the asbestos issue, of
25 a hundred and forty-nine thousand five hundred dollars.

26 Of the total, a hundred and seven thousand dollars
27 was for abatement or removal. And then forty-two thousand

1 five hundred was for installing a new floor. A new floor
2 once that abatement had concluded. So one of the things
3 that I asked him was, could you encapsulate the asbestos as
4 opposed to removing it by putting a flooring level over the
5 tiles that exist. And he said, yes, you could.

6 So in all of the instances of the four categories
7 that I mentioned, I tried to come up with what I felt was
8 the most cost-effective way of dealing with the problem, not
9 just taking his, what I'll call worst case estimate of
10 spending to the max, but rather if there's a more effective
11 way of doing it at a lower cost, concluding to that option.

12 Q Okay. So with respect to the asbestos, it was to put
13 new floor over the old floor?

14 A Right.

15 Q And that - and that -

16 A That was forty-two thousand five hundred dollars.

17 Q Okay.

18 A As opposed to a hundred and forty-nine thousand five
19 hundred dollars.

20 Q Okay. And that information is on page seven of -
21 twenty-seven of your report where - where it says floors; is
22 that correct?

23 A That's correct.

24 Q Now, how did you treat the - the lead in the water
25 issue?

26 A That's in the plumbing section I believe.

27 Q And that would be, I believe, on page twenty-nine?

1 A It's on twenty-eight and twenty-nine. So on twenty-
2 eight it's identified - well, this whole thing on plumbing
3 talks about where the bathrooms are and that water fountains
4 are located on the first and second floor.

5 The WSP had identified that there was lead in the
6 drinking water and they gave a number of cost alternatives
7 for dealing with that. It ranged from fifteen thousand
8 dollars on a low end to a hundred thousand dollars on a high
9 end.

10 The hundred thousand dollar way of dealing with it
11 was a lot new piping. It was very expensive way of solving
12 it. I asked them, well, what's the fifteen thousand dollar
13 way, and he said that there's an automated system that could
14 be installed that would inject chemicals into the water to
15 make it suitable for drinking. And so again, it solves the
16 problem at a lower cost alternative, so that's what I went
17 with on the solving the lead in the water issue.

18 Q Okay. How about the lead in the - the lead paint
19 issue?

20 A So he broke that down - or his total cost on the lead
21 paint for - with the windows was seven hundred and fifty
22 dollars per window. And I asked him, well, what is that
23 going to get you? And what that's going to get you is a
24 removal of the old window that has lead and - and disposal
25 of that window as well as a brand new window. And so I
26 said, well, how much is the cost of removal and disposal
27 versus the cost of the brand new window? Of the seven

1 hundred and fifty dollar per window costs, one twenty-five
2 was for the removal of the windows, plus a ten thousand
3 dollar disposal fees.

4 Q Excuse me.

5 A That's okay.

6 The balance was for brand new windows.

7 Again, I didn't want to use his number of seven fifty
8 because if I have brand new windows in the building, I have
9 a - I'll say a better building than what I'm appraising. And
10 so if I was going to include that total cost, I would have
11 valued the building for more then made a larger deduction.
12 Instead all I did was take off the one twenty-five per
13 window for the removal plus the ten thousand dollar disposal
14 fee for those old windows.

15 Q Okay. And I think the fourth issue is the
16 underground storage tank.

17 A Correct.

18 Q How did you deal with that?

19 A So the underground storage tank, he had a cost
20 estimate that - bear with me. On page twenty-six. And so -

21 Q And this starts on - it's the -

22 A The top of twenty-six.

23 Q - issues start on page twenty-five and over on to
24 page twenty-six?

25 A Right.

26 So he recommended that the in-place underground
27 storage tank be removed and replaced at a cost of forty to

1 forty-five thousand dollars as it had exceeded its life
2 expectancy. He also recommended a study for a phase two
3 subservice investigation.

4 One of the things that I discussed with him is that
5 somebody who acquires this building may not necessarily go
6 with the same type of heating system that's in place today.

7 They may replace the heating system. You could go to
8 rooftop units. You can go to heat pumps. There's a -
9 there's a lot of different ways that you could do it, in
10 which case you'd have to remove the underground storage
11 tank, but you wouldn't necessarily have to replace. If you
12 go with a rooftop package HVAC unit, you're not going to
13 have to put in an underground storage tank. You're not
14 going to need that.

15 So again, I felt his options were, I'll say best case
16 to worst case, and - from a cost prospective. And, you
17 know, the worst case was, you're going to have to spend
18 forty to forty-five thousand dollars on it. The best case
19 is you're just going to have to remove the tank at a cost of
20 ten.

21 Ultimately, I don't know what heating avenue a
22 potential purchaser is going to pursue, so I - I'll say I
23 compromised at something in the middle and deducted twenty-
24 five thousand dollars for the underground storage tank
25 issue.

26 Q So if we turn to page twenty-nine of your report in
27 the section that says environmental towards the bottom, you

1 calculate up the sums and you reach a conclusion as to how
2 much you're going to deduct for environmental. What - what
3 is your - what is your conclusion regarding the
4 environmental deductions?

5 A So my conclusion was the deduction of a hundred and
6 ten thousand dollars for the environmental issues, which is
7 a fraction of what Mr. Jones had in what I'll call his
8 worst-case scenario.

9 Q Okay. Now, what would - what would you say the
10 effect of the age of this building is, as you said, over a
11 hundred years old? What is the effect of the age on some
12 of these issues?

13 A The effective age?

14 Q The effect of the age.

15 A The effect of the age?

16 Q Since it's an old building. What -

17 A Yeah, I mean, it - it leads to more maintenance. It
18 leads to higher utility costs because you don't have windows
19 that are going to keep the heat in. The building doesn't
20 have air conditioning other than a couple sleeve units.
21 You're not an ABA complaint building. There's no elevators.
22 Bathrooms only on one level. I mean, it's nothing you'd -
23 if you were building a new school today, you're never doing
24 it this way.

25 Q Now, in determining what the value of the property
26 was, you - you went with the sales comparison approach?

27 A I did.

1 Q And if we turn to page thirty-seven of your report,
2 this is a summary of the five comparables you used?

3 A That's correct.

4 Q Why did you pick - well, let's start this way. What
5 was your process for coming up with these comparable
6 properties?

7 A We subscribe to various data base services to give us
8 leads on comparables. The two services that we subscribe to
9 are Concomp and Co-Star. And so I'll put parameters in and
10 I'll say start normally very narrow. Like, show me sales of
11 schools in New Haven that range from ten thousand to fifty
12 thousand square feet. In a perfect world, there'd be eight
13 or ten of them and you'd have plenty of data, and you can
14 say, I'm - I'm just going to stick to the City of New Haven.

15 Unfortunately, with properties like this, that
16 doesn't tend to be the case, so we expand the - the net and
17 we'll expand our geography, maybe the parameters on building
18 size, and come up with as many comparables as - as we can
19 and then start exploring those comparables to find out if
20 the sales are arm's-length transactions between non-related
21 parties, to find out if the buildings are physically like
22 the subject, location like the subject.

23 So we again, start by going through data bases, start
24 by doing research online to try and identify potential
25 comparables, and then after doing some research on them,
26 picking the ones we think are the best.

27 Q Okay. And do you - after - after you whittle them

1 reviewed his report and then had conversations with him.

2 Q Okay. And Mr. - Mr. Jones' report had a narrative in
3 the beginning; isn't that right?

4 A That's correct.

5 Q And then it was followed by several appendices,
6 right?

7 A Correct.

8 Q And it was about five hundred pages or so of
9 appendices?

10 A It was a lot of pages.

11 Q But you didn't review the appendices separately, just
12 the narrative, right?

13 A No, I - I mean, quite candidly, it's beyond my level
14 of technical understanding. I did what I'm trained to do in
15 these instances which is, in my certification to say that we
16 relied on the significant professional assistance of someone
17 who does have that expertise, which was Mr. Jones, and have
18 the conversations with him to make sure I understood the
19 points he was making.

20 Q Okay. So you didn't - so you don't know - you don't
21 have the expertise to understand exactly what he did, right?

22 A No.

23 Q Okay. And you - you - so you're just relying upon,
24 you know, what he's telling you and what's in the report,
25 and - and that's it?

26 A Yes, because that's his expertise.

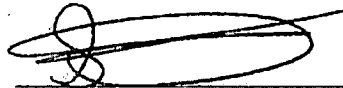
27 Q Okay. Did you do any type of independent inspection

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ELIYAHU MIRLIS : JUDICIAL DISTRICT
OF NEW HAVEN
v. : AT NEW HAVEN, CONNECTICUT
YESHIVA OF NEW HAVEN, INC. : DECEMBER 9, 2019
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C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of New Haven, New Haven, Connecticut, before the Honorable Claudia Baio, Judge, on the 9th day of December, 2019.

Dated this 26th day of December, 2019 in New Haven, Connecticut.



Sheila Demetro
Court Recording Monitor